

Vol. VII
TRANSCRIPT OF RECORD

(Pages 2683 to 3204)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 428

**PENNSYLVANIA WATER AND POWER COMPANY
AND SUSQUEHANNA TRANSMISSION COMPANY
OF MARYLAND, PETITIONERS,**

vs.

FEDERAL POWER COMMISSION ET AL.

No. 429

**PENNSYLVANIA PUBLIC UTILITY COMMISSION,
PETITIONER,**

vs.

FEDERAL POWER COMMISSION

**ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PETITIONS FOR CERTIORARI FILED NOVEMBER 16, 1951

CERTIORARI GRANTED FEBRUARY 4, 1952

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Hutchinson's Affidavit

STATE OF FLORIDA)
COUNTY OF DADE) SS:

Personally appeared before me, a Notary Public in and for the State and County aforesaid, DR. FRANZ HAHR STEWART, who upon oath, deposes and says that he is the physician for Cary T. Hutchinson, who is now residing at 1818 Granada Boulevard, Coral Gables, Florida, and that he has been advised that on January 13, 1939, Cary T. Hutchinson affixed his signature in the form of a cross mark to an affidavit, and that the signature was witnessed by Hollis Rinehart, Jr., and made before Clyde E. Pendley, a notary public; that on the date of the above signature Mr. Hutchinson was capable of understanding the purport of his actions; that several of Mr. Hutchinson's vertebrae show x-ray evidence of some metastatic process, probably a malignancy, and one vertebra is seriously damaged by the process, which has resulted in a paralysis extending below the waist, a weakened physical condition, which has not yet affected his mind or his mental facilities.

Franz Hahr Stewart

Subscribed and sworn to before me, this 14th day of January, A. D. 1939, at Miami, Florida.

Eugene Martin
Notary Public, State of Florida at
large

My commission expires:

Apr 10 1941

STATE OF FLORIDA)
COUNTY OF DADE) SS:

Personally appeared before me, a Notary Public in and for the State and County aforesaid, HOLLIS RINEHART, JR., who upon oath, deposes and says that Mr. Donald Gunn, representing the Pennsylvania Water & Power Company, conferred with him in Miami, Florida, for several days with reference to information and in particular a statement to be obtained from Mr. Cary T. Hutchinson of Coral Gables, Florida; that during the several conferences with Mr. Gunn, Affiant went over in detail the data and information to be obtained from Mr. Hutchinson and prepared an affidavit setting forth in detail information which Mr. Hutchinson was in a position to give; that Affiant at the time was not only serving as Mr. Hutchinson's personal counsel, but had been acquainted with Mr. Hutchinson and his family for many years; that on January 13, 1939, Affiant conferred with Mr. Hutchinson at his home in Coral Gables, at which time he read to him the aforesaid affidavit and after due discussion Mr. Hutchinson endeavored to subscribe his name to the instrument; that he was unable to do so, but then and there did affix his signature in the form of his cross mark, which was witnessed at the time by Affiant and by Clyde E. Pendley, notary public; that at the time Mr. Hutchinson was thoroughly capable of understanding the contents of said affidavit and was thoroughly informed of the statements contained therein.

Haens Reinhard ja.

Subscribed and sworn to before me at Miami, Florida,
this 14th day of January, A. D. 1939.

Evelyn Marik
Notary Public, State of Florida at large

My commission expires:
November 10, 1941.

STATE OF FLORIDA)
COUNTY OF DADE) SS:

Before me, the undersigned authority, personally appeared CARY T. HUTCHINSON of 1818 Granada Boulevard, Coral Gables, Florida, who upon oath deposes and says:

1.

That this affidavit is given principally for the purpose of assisting the Pennsylvania Water & Power Company in establishing the original cost of its properties under the requirements of Public Utility Regulatory Authorities. In this connection, Affiant has held numerous conferences in Miami, New York and Baltimore with representatives of the aforesaid corporation, reviewed and examined pertinent data and records, including the pertinent records and data of McCall Ferry Power Company, and thoroughly refreshed his mind and memory in connection therewith.

2.

That during the year 1899, Affiant first became interested in the possibilities of power development on the Susquehanna River; Affiant, in cooperation with John Bogart, a hydro-electric engineer, undertook a study of these possibilities on behalf of Charles Fairchild, a private banker in New York. Following this, Affiant, through a Mr. Coho, who had been associated with Affiant in the General Electric Co., met Messrs. Beyer and Willson. These latter gentlemen were seeking advice in connection with the reduction of iron ore through the use of electricity, and were members of the York Furnace Partnership, which had been acquiring property on the Susquehanna River in the vicinity of York Furnace for a small hydro-electric development. As a result of the contacts thus established, Affiant became

personally interested in the development of electrical power from the Susquehanna River. Affiant's investigations established the fact that the reduction by electricity of the iron ore available in that vicinity would not prove feasible, but Affiant purchased from the York Furnace Partnership, with his own funds, an option on the partnership's holdings in that vicinity, including land and water power rights acquired by the Partnership, in contemplation for use in connection with the reduction of iron ore, being personally impressed with the possibilities of creating power from the Susquehanna River in that vicinity. Following this, Affiant in partnership with Mr. George S. Morison undertook to buy up and acquire sites and other properties on the Susquehanna River near McCall's Ferry, having reached the opinion that the York Furnace site was not the most desirable. Mr. Morison withdrew from the partnership and Affiant, using his own funds, took over his interest therein. The Affiant's funds were exhausted and Affiant's father-in-law, Mr. Henry F. Dimock, undertook and did lend his own funds and obtained other financial aid for Affiant in the furtherance of the project. During this period, Affiant conferred with his attorney, Mr. Lorenzo Semple of Courdert Brothers, on both the legal and business phases of the enterprise. Affiant found Mr. Semple an able attorney and of inestimable help on the business phases of the project.

3.

After protracted negotiations Affiant secured properties near McCall Ferry known as the Fry Tracts. Messrs. Harlow, McCaw & Houseman owned the canal rights on the Susquehanna River near McCall Ferry, thereby blocking Affiant's efforts to develop power in that locality. As a result, Affiant found it necessary in order to protect his position at the McCall Ferry site to acquire property in the lower section of the River. The competition in the purchase of land and water power rights offered by Messrs. Harlow, McCaw & Houseman and others resulted in a

material increase in prices demanded for the properties and brought about legal difficulties which were handled by counsel and concerning the details of which Affiant has no recollection at this time. Several attempts were made to buy out the opposing interests, to consolidate with them or to sell to them, but these negotiations were consistently unsuccessful. After numerous delays, a compromise arrangement was finally reached, which resulted in Messrs. Harlow, McGaw & Houseman withdrawing their opposition to the development proposed by Affiant. Affiant recalls, however, that as a result of these negotiations and legal entanglements, he had incurred by the year 1905 large expenditures in the purchase of the land, water power rights, legal and engineering fees and services, etc. and in addition Affiant had not only devoted practically all of his own time and efforts to the enterprise, but it had required much time and effort on the part of others. It became apparent, as the situation then stood, that Affiant's investments and commitments could not be recovered unless his holdings were sold or additional monies were obtained for the development of the project.

4.

By the early part of the year 1905, Affiant had completed his preliminary designs for the proposed development and employed William Barclay Parsons, a consulting engineer, to verify his plan for the development. Following this Affiant and his father-in-law, Mr. Dimock, placed the matter before Mr. S. R. Bertron, a private banker in New York City, who undertook to form and head a syndicate to finance the project. At this time it was contemplated by Bertron for the bankers, that upon the formation of a corporation to take over the development project, not less than one half of the common stock and \$750,000.00 in cash would be issued and delivered to Affiant as compensation for his efforts and monies invested, and as a means of enabling Affiant to pay off

and meet his obligations and for expenses, legal fees, etc. incurred to that date. Pursuant to this understanding, Mr. Bertron formed a syndicate to underwrite the finances required. Mr. Bertron soon concluded, however, that the proposition was more than his firm could complete. He thereupon suggested that the matter be placed before Harvey Fisk & Sons of New York City and that that firm be asked to head a new syndicate. The Fisk firm agreed to undertake the formation of the new syndicate and save the underwriting, but insisted as consideration for its efforts that a majority of the common stock of the proposed development corporation be issued to Harvey Fisk & Sons, or its nominees. Affiant recalls that of the 50,000 shares of common stock to be issued under the Harvey Fisk & Sons plan, the bankers were to receive 30,000 shares and that the remaining shares, plus \$750,000.00 in cash, were to be given to Affiant to be utilized for the same purpose as under the Bertron plan. Affiant considered this to be a rather exorbitant demand, but in view of the impending failure of Bertron's attempt to finance the project and particularly in view of the large amounts which Affiant had already invested in the enterprise and the demands made upon him by those to whom he was indebted, it was finally agreed to accept the proposition as submitted by Fisk. Following the arrangement then agreed upon, an agreement dated June 14, 1905, was entered into by Cary T. Hutchinson, the Affiant, and Susquehanna Contracting Company, a corporation organized under the laws of the State of New York, under the terms of which agreement, Affiant conveyed to McCall Ferry Power Company, a corporation organized under the laws of the State of Pennsylvania, all of the lands, water power rights, etc. which had been acquired to date in connection with the proposed development project. The ultimate consideration to Affiant arising out of the above negotiations was agreed upon to be \$750,000.00 in cash and the delivery to Affiant of 16,840

shares of the common stock of McCall Ferry Power Company, which stock was so delivered to Affiant. As previously stated, Affiant had incurred expenses and obligations for which he considered himself personally responsible in connection with the development of the enterprise. In addition to repayments in cash, which exhausted the entire \$750,000.00, Affiant used about 50% of this stock in McCall Ferry Power Company in payment of attorneys' fees, engineering and other fees, and in the payment of obligations arising out of the purchase of land, water power rights, etc.

5.

Following the completion of negotiations with Harvey Fisk & Sons and execution of the foregoing contract, the total sum of \$750,000.00 was paid to Affiant in the form of two checks. One check was in the sum of \$155,500.00, which Affiant endorsed to the order of Messrs. Beyer & Willison in payment of option acquired by Affiant known as the York Furnace Option. The other check in the sum of \$594,500.00 was deposited by Affiant to Affiant's account with the Mercantile Trust Company of New York City. This latter sum was disbursed by Affiant in the repayment with interest of monies loaned to Affiant which had been used for the acquisition of land and water power rights and was further disbursed in payment of legal and engineering fees, travelling and office expenses and other obligations incurred in the development of the project. Affiant has not been engaged in active business for many years and has no longer available any records of his expenditures, obligations, etc. incurred by him in connection with the enterprise, nor of the disbursement of monies received as herein set out. Affiant has requested of the successors of the Mercantile Trust Company of New York City that a search be made for cancelled checks and other records evidencing the disbursements above set out, but has been advised by the Bankers Trust Company, present successor to the Mercantile Trust Company, that the records for June, 1905, are no longer in existence.

Affiant further states that in addition to the above sum of \$594,500.00, it was necessary to utilize, as heretofore stated, a large portion of the 18,840 shares of the common stock of McCall Ferry Power Company to pay off and meet the obligations incurred by him in connection with the project, so that as a result the interest which he was able to retain for himself in the project was a much smaller interest than he considered his services and his financial investment to justify, particularly in view of the risks assumed by Affiant and the obligations incurred prior to the date of the sale to Susquehanna Contracting Company. That at the time, Affiant was of the opinion, based on his knowledge of the project as an engineer, that the common stock should return a dividend of from 2% to 3% of its par value, which would make it worth from \$20.00 to \$30.00 per share, based on earnings alone. This opinion was concurred in by those who were fully informed concerning the enterprise.

The financing was successfully completed by Harvey Fisk & Sons, and the organization of McCall Ferry Power Company was completed and the plan for development of the enterprise which has been worked out by Affiant was adopted and Affiant was offered and accepted the position of chief engineer of the corporation. Affiant from that time on devoted his abilities to the design and construction of the plant and was not concerned with the financial and legal aspects of the business. It was decided to increase the capacity from 50,000 H. P. to approximately 100,000 H. P., which required more financing than had been originally provided and Affiant so reported. Due to delays in arranging for the additional finances, the monies originally provided became exhausted. This occurred at a time when the market had become unfavorable for the raising of money and

resulted in a receivership and reorganization of the corporation. Affiant opposed the plan of reorganization sponsored by Harvey Fisk & Sons, but foreclosure proceedings were consummated so hurriedly as to render it impossible for him to formulate an effective opposition within the time available.

Witness as to mark

Harvey Fisk

Cary T. Hutchinson

Cary T. Hutchinson

Subscribed and sworn to before me, this 13th day of January, A. D. 1939.

Clyde E. Pennington
Notary Public, State of Florida at large

My commission expires:

Notary Public, State of Florida at Large

My Commission Expires Aug. 7, 1940

STATE OF FLORIDA)
) ss.
COUNTY OF DADE)

12-7-38

I, E. B. LEATHERMAN, Clerk of the Circuit Court of the Eleventh Judicial Circuit, in and for said County, the same being a Court of Record, having a seal, and also Recorder of said County, do hereby certify that I am legal custodian of the records wherein is recorded commissions of Notaries Public, and that

Clyde E. Pennington

by whom the foregoing acknowledgment was taken, and whose name is subscribed thereto, was, at the time of taking the same, a Notary Public residing in said County, duly commissioned and sworn, and authorized by the laws of said State to take the proof or acknowledgment of deeds and other instruments in writing, and to administer oaths or affirmations in said County; and that his commission as said Notary Public is of record in said County. I further certify that the laws of Florida do not require an impression of the seal to be on file in this office, and, verily believe that the signature attached to the annexed instrument is his genuine signature.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official Seal, which is the Seal of said Court, at Miami, Florida, this 14 day of Jan, A. D. 1939.

E. B. LEATHERMAN,
Clerk, Circuit Court.

By *M. Swift*
Deputy Clerk.

Agreement Between Hutchinson Interests and Harlow-McGaw Providing for Elimination of Conflicting Interests

THIS MEMORANDUM, made this 14th day of April, 1903, by and between ----- and ----- parties of the first part, and -----, party of the second part, SHOWS:

The parties of the first part represent that they own and control all the shares of the capital stock of the Susquehanna Falls Power Co., a corporation existing under the laws of Pennsylvania and formed and organized under the corporation act of 1874, and its supplements; that they own and control a majority of the shares of the capital stock of the Susquehanna Canal & Power Co., a corporation organized and existing under the laws of Pennsylvania; that they own and control a majority of the shares of the capital stock of the Susquehanna & Tidewater Co., a corporation organized and existing under the laws of Pennsylvania; that they and their associates own and control certain lands, water-rights and easements, and have options upon other lands, located in Martis Township, Lancaster County, and in Lower Chanceford Township, York County, which have been secured in the interest of the Susquehanna Falls Power Co; and that they have also procured and have had assigned to such company, releases from various persons, of damages which may be caused by it upon lands located in said township.

And whereas, the party of the second part, and his associates for whom he is acting, contemplate erecting, or causing to be erected, a dam and water-power plant, in the Susquehanna River, about one mile below McCall's Ferry and thereby raising the level of the water in said river, between such dam and a point in said river, at or near Shenk's Ferry, about six miles above the proposed dam; and the parties of the first part are willing to aid and facilitate the construction, and maintenance of the proposed dam and water-power plant upon conditions hereinafter named:

NOW THEREFORE IT IS AGREED AS FOLLOWS:

The parties of the first part, for one dollar and other valuable considerations unto them paid, by the party of the second part, the receipt of which is acknowledged, agree that they will upon request, at any time within six months from the date hereof, assign or cause to be assigned unto the party of the second part, or as he shall direct, all of the shares of the capital stock of the Susquehanna Falls Power Co., and that they will convey or cause to be conveyed and assigned, unto the party of the second part, or as he shall direct, all their right, title, interest and claim in and to the lands, water-rights and easements, owned and held by them and their associates and intended for the benefit of the Susquehanna Falls Power Co., free from all incumbrances created by the grantors, PROVIDED, that they shall then be reimbursed all moneys expended by them, in and about the organization of the Susquehanna Falls Power Co., and in making surveys and plans, etc., with respect to its proposed plant or works; and also be reimbursed all moneys expended by them, and their associates, in procuring lands and releases of damages, intended for the benefit of the Susquehanna Falls Power Co., together with interest on all such sums, which amounts shall not exceed in the aggregate, \$20,000.00 and for all of which vouchers shall be submitted; AND PROVIDED: that the subscribers and holders of the shares of the capital stock of the Susquehanna Falls Power Co., shall be indemnified against all liability with respect to the unpaid subscription thereon; AND PROVIDED FURTHER that at the same time, or at such earliest time as the same shall be requested, the party of the second part shall convey or cause to be conveyed unto the parties of the first part, or as they shall direct, all the right, title, interest and claim of the associates of the party of the second part, in and to the lands water-rights and easements, acquired by them and located in and near the Susquehanna River, in Peach Bottom Township, York County, and Drumore and Fulton Townships, Lancaster County, free of incumbrances created by them, upon

upon their being reimbursed the cost thereof, with interest, which will amount to a sum not exceeding \$8,000.00 and for which vouchers shall be submitted.

The parties of the first part further agree that they will cause or procure, the Susquehanna Canal & Power Co., by means of lawful corporate action, on its part, to enter into a contract with the party of the second part and his associates, or such corporation as shall hereafter be formed in their behalf, for the purpose of constructing, maintaining and operating a dam and water-power plant, about one mile below McCall's Ferry, as before mentioned, in pursuance of which contract, the Susquehanna Canal & Power Co., will consent and agree to the construction, maintenance and operation of such dam and water-power plant, UPON CONDITION, that if the level of the water shall be raised by reason of such dam above that of the present canal, the Susquehanna Canal & Power Co., its successors and assigns, shall have the right of passage for vessels along the route of said canal, and within the pool formed by such dam, and that the persons owning or operating such dam and water-power plant, shall at its or their expense, make provision, in accordance with good engineering requirements, for and shall lock or otherwise move vessels in and out of such pool and to the end that the canal and water-way may be successfully operated for transportation purposes. In case any controversy arises at any time or times, with respect to whether or not the provision made for locking or otherwise moving vessels in and out of said pool, and past said dam, is in accordance with good engineering requirements, thereupon either party interested therein shall have the right to have said controversy arbitrated and upon giving a written notice to the other party with respect thereto, it shall be the duty of each of the parties to select an arbitrator and the two so chosen shall immediately select a third, and all of such arbitrators shall be disinterested and be civil or hydraulic engineers, of good repute.

Such arbitrators shall without delay make full investigation with respect to the matter in controversy and the award in writing signed by such arbitrators, or a majority of them, shall be binding upon the parties.

The parties of the first part further agree that they will cause the Susquehanna and Tide-water Railroad Co., by proper corporate action, to locate its route along the west bank of the Susquehanna River, opposite the pool caused by the erection of the proposed dam at an elevation above the level thereof, and so as not to interfere with the plant or works of the Water Power Co., upon condition that the party of the second part or his associates, or the company owning or controlling the proposed dam, will without further or other consideration, grant unto the said Railroad Company, and its successors and assigns, the right of way for its tracks, through over and upon the lands now or hereafter belonging to or held in the interest of the said water-power company.

The parties of the first part agree that they will not attempt to construct any dam and will not interfere with the party of the second part, or his associates, at any point between the lower end of the tail race of the proposed dam, (which shall not exceed one mile in length) and Shenk's Ferry and the party of the second part and his associates shall not attempt to construct any dam nor interfere with the parties of the first part, at other places upon said river.

This instrument is executed in triplicate and either thereof may be deemed the original.

This agreement shall be binding upon and inure to the parties hereto, their executors, administrators, and assigns, respectively.

Witness the hands and seals of the parties,

Seal.

Seal.

Seal.

1st Extension R. R. Co.

S C + P Co - 16

⑨

Probably

10/9/03

(CB)

It is hereby stipulated and agreed
in consideration of the sum of
one dollar that the contract dated
April 14th 1903 between M. H. House-
man and James H. Harlow ~~of the~~
first part and R. R. Quay of
the second part be and hereby
is extended to and including
November 15th 1903 and the
options therein contained can be
exercised until said Nov. 15, 1903.

M. H. Houseman

James H. Harlow

per M. H. Houseman atty.

{ R. R. Quay

{ by Lorence Sample

SC + PC - 16

(9)

WHEREAS a certain Memorandum of Agreement was made and signed under date of April 14th, 1903, by and between James H. Harlow and M. H. Houseman, as parties of the first part, and R. R. Quay, as party of the second part; a copy of which is hereto annexed as a part hereof;

AND WHEREAS it is now the understanding and agreement between said parties and their respective associates, that the options, terms and provisions of said agreement will be extended for a further period of time until May 15th, A.D. 1904:

Now to that end this Agreement witnesseth:

That for and in consideration of the premises, and of the sum of one dollar and other valuable considerations, each to the other paid, it is mutually covenanted and agreed between the parties hereto, for themselves, their associates, successors and assigns,

That the options, terms and provisions of the said Agreement dated April ~~14th~~ 1903, be and the same are hereby extended to and including the fifteenth day of May, A.D. 1904, and the said Agreement is operative and in full force, and the options therein stated and contained can and may be exercised until said May 15th, 1904.

WITNESS the hands and seals of the parties.

Witness:

James H. Harlow (SEAL)

M. H. Houseman (SEAL)

Chas A. McKee — R. R. Quay (SEAL)

WHEREAS a certain Memorandum of Agreement was made and signed under date of April 14th, 1903, by and between JAMES H. HARLOW and M. H. HOUSEMAN, as parties of the first part, and R. R. QUAY, as party of the second part, a copy of which is hereto annexed, as a part hereof;

AND WHEREAS the options, terms and provisions of said agreement were further extended until May 15th, 1904,

NOW THIS AGREEMENT WITNESSETH:

That for and in consideration of the premises and of the sum of One Dollar and other valuable considerations each to the other paid, it is mutually covenanted and agreed between the parties hereto for themselves, their associates, successors and assigns, that the options, terms and provisions of the said agreement dated April 14th, 1903, be and the same are hereby extended to and including the 15th day of May, 1905, and the said agreement is operative and in full force and the options therein stated and contained can and may be exercised until said 15th day of May, 1905.

WITNESS the hands and seals of the parties.

Witness:

Chas. L. McCombs

Austin J. Litch

Chas. H. Miller

James H. Harlow (SEAL)

M. H. Houseman (SEAL)

R. R. Quay (SEAL)

Parsons' Engineering Report, January 13, 1905

REPORT

ON

POWER DEVELOPMENT OF SUSQUEHANNA RIVER

AT

MCCALL'S FERRY, PENNSYLVANIA

WM. BARCLAY PARSONS

Consulting Engineer

320 Broadway. - New York City

JANUARY 13, 1905

WM. BARCLAY PARSONS

CONSULTING ENGINEER

320 Broadway

New York, January 13, 1905

Report on Power Development of Susquehanna River

at

McCall's Ferry, Pennsylvania

DR. CARY T. HUTCHINSON, D.

56 Pine St.,

New York City.

Dear Sir.—In compliance with your request, I have made an examination of the data collected with regard to the Susquehanna River, and beg leave to submit the following report on the water power development to be located at McCall's Ferry, Pennsylvania.

This is a project to dam the Susquehanna River near McCall's Ferry, Pennsylvania, about ten miles north of the Maryland State line; to build a water power plant to generate electricity; and to transmit the current to places where a market can be found.

McCall's Ferry is situated in Pennsylvania, about 60 miles from Philadelphia, 40 miles from Baltimore, 35 miles from Harrisburg and 15 miles from Lancaster. In addition to these places, there are within a radius of 45 miles from the site the cities of Lebanon, Reading, Wilmington, Chester and York. The location is favorable to the transmission of power. The territory between Philadelphia and Harrisburg is being developed by electric railways and small electric lighting plants. There can be no question that all the power generated at this site can be readily sold.

The general plan of the development is to build a concrete dam across the river, with a power-house at one end equipped with water wheels and electric generators. The surveys and plans on which this project is based were made by the late George S. Morison, M. Am. Soc. C. E., and are the results of examinations extending over a period of nearly three years. The proposed site was chosen as a good location for a dam; and also because the topography of the river at this point makes it reasonably certain that it will be practically free from disturbance from ice. Above the dam site the river narrows and also bends, while at the proposed site the river widens and is straight. When the ice gorges above break, the floes are discharged through the "Neck" broken into small pieces, and owing to the bend are deflected to the side of the river away from the power-house.

The heaviest ice gorge known occurred during the Spring of 1904. Observations and photographs taken during that period show that the expectations were justified, and that the power-house side was practically free from ice during the period.

The records of the river for the last fourteen years are available, having been kept for that period by the U. S. Geological Survey. In addition, the observations that have been made at the

site have added materially to the knowledge of the flow of the river, and the regimen of the river may be considered a known quantity. There is some dispute, however, as to the minimum flow in the driest year. You have taken this to be 3,000 cubic feet per second at McCall's Ferry, while there is some evidence that it may be greater. In this report I accept your figure of 3,000 cubic feet per second, as it is unquestionably safe. The maximum flood discharge has been estimated from various data and in all probability is between 650,000 and 750,000 cubic feet per second. I have used the larger figure in determining the depth of water on the crest of the dam during maximum floods.

The dam will have an elevation of 155 feet above the mean sea level at Havre de Grace; a length of approximately 2830 feet; a maximum height above tail water of 55 feet; and an average height of about 32 feet above the rock surface.

The dam will be of monolithic concrete construction. At the east end the power-house will be located, the elevation of the power-house floor being placed above the maximum flood level. Vertical shaft turbines will be used, with direct-connected electric generators; and the electric current will be transmitted in the usual way to Philadelphia, Baltimore or any other points that may be determined.

The situation is such that as the flow of the river increases the tail water below the dam will rise more rapidly than the depth of water flowing over the crest. This increase of rise of back water will diminish the head, but the discharge of the river increases so rapidly that there is more than an abundance of water to develop the power required. The maximum head will be 54 feet and the maximum head, occurring in the average flood season, will be approximately 30 feet. Turbines will be cut in having a capacity to deliver the maximum power contemplated under a head of 30 feet; and will, of course, have excess capacity under the higher heads.

The pond formed by the dam will have an area of approximately 60,000,000 square feet. The water contained in one foot depth of this pond is sufficient to deliver about 50,000 horse-power (the proposed capacity of the development) for 75 minutes; and the storage is sufficient to provide for the load fluctuations such as will obtain in Philadelphia or Baltimore, having an average load equal to half of the maximum.

There is a further possibility of damming two small streams and impounding enough water to avoid the necessity of the auxiliary steam plant mentioned below.

Some question has been raised as to the feasibility and practicability of a dam of the character described, on a river subject to great floods. However, a concrete dam of similar construction, of slightly greater length and somewhat greater height at Betwa, India, has passed a flood calculated to be 970,000 cubic feet per second, with a depth of water on the crest of the dam equal to 16.4 feet. The amount of water per foot of length of dam was greater than it would have been at the McCall's Ferry dam, assuming a repetition of the extraordinary conditions producing the great flood of 1889. In my opinion, a dam at McCall's Ferry is practicable, and can be built without unusual difficulty for the amount stated in the estimates.

The following estimate of the cost of construction is based on the surveys and examinations made by the late George S. Morison, and is substantially a repetition of the figures given by him. I have gone over his data in detail and have checked his conclusions.

The estimate provides for the delivery of 50,000 horse-power at the low pressure side of the transformers in Philadelphia; it includes the cost of construction of the dam, power-house, tail-channel cut, embankment for railroads, and some minor work in the river; complete hydraulic equipment of the power-house, with wheels having a capacity of 75,000 horse-power at full discharge and electric generating equipment of 42,500 kilowatts; three separate transmission lines to Philadelphia of a total length of 200 miles, and the equipment for three sub-stations.

* See Water Supply and Irrigation Paper No. 87, U. S. Geological Survey, Page 179.

These costs, exclusive of land, will be:

1. Dam, power-house, superstructure and sub-structure, tail-race channel, protection to railroad, all permanent construction, and three sub-station buildings.....	\$1,724,000
2. Complete hydraulic equipment, having a capacity of 60,000 h. p. on the shaft at 30 ft. head including governors, shafts and all appliances.	500,000
3. Complete equipment of power-house, capacity of 42,500 k.w. and of three sub-stations, having a total capacity of 50,000 h. p. output.	950,000
4. Three complete transmission lines, each 67 miles long.	500,000
	<hr/>
	\$3,674,000
Unclassified and Engineering at 10%.....	367,000
Total.	<hr/>
	\$4,041,000

Owing to the variable flow of the river, there are years in which 50,000 horse-power cannot be delivered at, say, Philadelphia, although in some years there is more than enough water for this purpose. The records for the last fourteen years, which include two periods of very low water, show that in the average year it will be necessary to supplement the water power for thirty days, and in the driest year for one hundred days.

The size of the steam plant necessary to supplement the water is determined by the minimum flow of the river,—that is, by the power that the steam plant must deliver when the river is lowest. This will depend somewhat upon the distribution of load during the twenty-four hours. The minimum flow of the river occurs in summer, at which time the maximum demand for power will probably be the least. A steam plant having a maximum capacity of 25,000 horse-power will be ample for the purposes. The rated capacity of such a steam plant, used for short periods, need not be more than two-thirds of its maximum,—that is a steam plant having a rated capacity of 17,000 horse-power will probably be sufficient. Such a steam plant could be of a simple character, and need not be designed for high economy. It would not cost more than \$1,000,000, bringing the total cost of the project, equipped to deliver 50,000 horse-power under all conditions, to \$5,041,000. This steam plant could be used to supplement the water power plant in case an extraordinary flood should lower the head so that sufficient power could not be obtained from the water, although it is not expected that such use will be necessary.

To deliver 50,000 horse-power in the average year, at 50 per cent. load factor, it will be necessary to supply 2.3 per cent. of the total power by means of steam. For different amounts of power delivered the proportion of the total that must be made by steam would be as follows:

50,000 horse-power.	2.3%
60,000 " "	3.7
75,000 " "	6.0

This table indicates that it might be economical to develop a power for delivery of over 50,000 horse-power. This increased development can be made at a cost per horse-power less than that used for the above estimates of cost, since it requires only an increase in the size of the power-house and in the equipment, but no increase in the cost of the dam or river works.

It would be possible, at a comparatively slight increase in investment, to install at any time surplus generating equipment in addition to that covered by the above estimates for 50,000 horse-power, so as to utilize, say, 75,000 horse-power for nine months of the year. This would mean an electrical installation of 25,000 horse-power additional, which would not be available for use during, say, three months of low water.

Yours respectfully,

(Signed)

WM. BARCLAY PARSONS.

Johnson's Legal Opinion Re: Organization of Company

McC-91

(2)

Susquehanna Electric Power
Development.

February 8th, 1905.

John G. Johnson, Esq.,
Land Title Building,
Philadelphia, Pa.

My dear Mr. Johnson:

In order to refresh your memory as to the facts relating to the development of power on the Susquehanna River at McCall's Ferry, I beg to call your attention to the standing of the matter in May, 1903, which conditions exist, as I am informed, at the present.

You will remember that Mr. Cary T. Hutchinson is the owner in fee of lands on each side of the Susquehanna River in York and Lancaster Counties at McCall's Ferry. He either owns in fee or has releases from damages from the owners in fee of all property above and below McCall's Ferry along the Susquehanna River on each side which will be affected by the erection of a dam across the said River at that point to an elevation of 160 feet above tide water. Houseman and Harlow owned the bed of the old Susquehanna Canal and had also organized Water Power Companies on each side of the River and had also projected a line of railroad upon one side of the River. All of these properties would have been affected by the proposed development of Mr. Cary T. Hutchinson.

We have an agreement with Houseman and Harlow under the terms of which all opposition upon their part, by reason of their ownership of the above, will be removed.

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You advised us in May, 1903, that in your opinion Water Power Companies organized in the townships on each side of the Susquehanna River and owning in fee the lands affected thereby had authority under the laws of Pennsylvania to erect and construct a plant in the two townships in which they are authorized to transact their business and as owner of the adjoining lands on the Susquehanna River to erect and construct a dam across the said River subject to the provisos contained in the Mill Dam Act and that upon the completion of said plant the said Company would only have power to supply water power for commercial and manufacturing purposes within the two townships in which they are authorized to transact business.

That the said Company would also have power to develop electric power for commercial purposes by means of water power and to supply current and power to the public and to distribute the same, but that its ~~has~~ power to distribute and transmit and sell current might be confined to the two townships within which it was authorized to transact business.

Your opinion as to this latter limitation was based upon the case of *Fly v. Mt. Paer Water Co.*, 197 Pa. 97, though the phraseology of the Act of 2nd July, 1897, would lead one to believe that such Companies might furnish electric power without limitation as to the territory.

Is there not a distinction between Companies organized to

supply water to the public and Companies organized to supply water power for commercial and manufacturing purposes, and does not the Act of 2nd of July, 1895, (P. L. 425) confer upon the latter Companies power to distribute electric current to any place or places and thus eliminate the territorial limits placed upon Companies for the supply of water to the public?

You advised us, however, that this territorial limitation in any event could be eliminated by establishing a line of Water Companies in different townships through the territory intended to be served by electric power.

You also advised us that the Act of the 8th of May, 1889, (P. L. 136) provides for the incorporation of Companies for the supply of light, heat and power, or any of them, to the public by electricity, and that the Merger Act of the 29th of May, 1901, (P. L. 349) is operative in the case of this class of incorporation and that it would be possible by merger to have the corporation which could supply electric power through all the districts covered by the different merged companies.

We desire that our proposed Company shall be authorized to issue eight millions of capital stock, one-half preferred and one-half of common, and eight millions of bonds.

The Water Power Company will own in fee all of the lands on each side of the Susquehanna River affected by the dam; it will also own flowage rights and releases of damages from such

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lands as are not owned in fee; it will own the dam, power house and development plant. If we are compelled to organize Electric Power Companies, then all of the capital stock of the merged electric power company will be owned by the water power company, and this stock could be also used as security for the bonds issued under the mortgage of the Water Power Company.

The Act of March 24, 1887, (P. L. 39) Provides that gas and water companies may borrow money and issue bonds to an amount not exceeding in the aggregate one-half of the capital stock of such Company paid in.

The Act of May 21st, 1899, (P. L. 257) provides: "It shall be lawful for all corporations to borrow money or to secure any indebtedness created by them by issuing bonds with or without coupons attached thereto and to secure the same by a mortgage or mortgages to be given and executed to a trustee or trustees for the use of the bondholders upon their real estate and machinery, or on their real estate alone to an amount not exceeding one-half of the capital stock of the corporation paid in and at a rate of interest not exceeding six per cent. Provided, that it shall be lawful for such corporations as belong to the classes named in Clauses 4, 5, 6, 7, 9 and 11 of Corporations for Profit of the second class as set forth in section two of the Act, of which this is a supplement, and also for such corporations as belong to the

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class named in Clause 24, Section 2 of the Act of Assembly, approved April 17, 1876, so to borrow and so to secure the payment of the same by a mortgage or mortgages on its property and franchises to an amount not exceeding double the amount of the capital stock of the corporation actually paid in and at a rate of interest not exceeding six per centum.

Clause 9 of the Corporation Act of 1874 reads: "The supply of water to the public or the supply, storage and transportation of water and water power for commercial and manufacturing purposes."

Clause 11 of the same Act reads: "The manufacture and supply of gas or the supply of light, heat and power by means of electricity or the supply of light, heat and power to the public by any other means."

The original Corporation Act of 1874 was amended by Act of May 16, 1889 (P. L. 226) so as to include water and water power companies. It will be noted that the Act of May 21st, 1889, just quoted, which authorized Companies to borrow double the amount of their capital stock was not passed until five days after the incorporation of water power companies had been inserted in the water company clause so that this right to issue bonds applies to water power as well as water companies. It also applies to electric light and power companies.

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Will you advise me whether the statutes above referred to would authorize our proposed water power company to issue bonds equal to the amount of the stock paid in and issued?

Pardon me for having gone so much in detail, but I thought that I could save you trouble by putting the matter before you in this way.

The plan I now propose for your consideration and opinion as to its legality is as follows:

1. The Pennsylvania Power Company, a corporation formed by the merger of the two Companies organized under the Act of 1824, and the supplements and amendments thereto, now has a capital stock of \$10,000; increase the capital stock of this Company to a total authorized issue of \$8,000,000., one-half preferred and one-half common stock, and have this Company by proper proceedings authorize the issue of bonds to the extent of \$8,000,000.

2. Organize a chain of electric power companies covering the territory from McCall's Ferry to Lancaster, Pa., and from McCall's Ferry to Philadelphia, Pa., merge these corporations into one company and have this company sell to the Pennsylvania Power Company its capital stock in consideration of an agreement by the Power Company to erect and construct a complete transmission line and plant for delivering electric power to Lancaster and Philadelphia, and such other places as may be necessary.

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3. Cary T. Hutchinson will then make a contract with the Pennsylvania Power Company under the terms of which, in consideration of the issue and delivery by the said Company to the said Hutchinson of capital stock of the par value, of say, \$3,000,000. of preferred and \$3,000,000. of common stock, and bonds secured by mortgage upon its franchise and all of its property of the par value of \$6,000,000. The said Cary T. Hutchinson would convey to the said Pennsylvania Power Company all of the real estate, riparian rights, releases of damages, &c., ~~which would be owned by~~ him at and about McCall's Ferry along the Susquehanna River, which would be affected by the erection of a dam on the Susquehanna River to a elevation of 160 feet above tide water and would agree to construct the said dam, buildings, machinery, appliances, reservoirs, &c. for a complete electric water power plant and to erect poles, wires &c. for the transmission of electric power to Philadelphia and Lancaster and Baltimore, or such places as might be necessary in accordance with the plans and specifications to be attached to the said contract.

4. The remaining stock and bonds in the treasury of the Company, which it is authorized to issue, shall be used in the future to acquire, if deemed advisable, all of the other water power rights along the Susquehanna River to tide water.

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3. We desire at the very earliest possible moment to prepare an underwriting agreement to be signed by underwriters of the bonds of the Company proposed to be organized, the details of which we will explain to you as soon as you can give us an appointment.

Yours very truly,

O P I N I O N .

My opinion has been asked in connection with the Susquehanna Electric Power development, concerning certain matters which will appear hereafter. This opinion is intended to be supplementary to an opinion heretofore rendered in letters bearing date 5th, 9th and 13th May, 1903, and is given subject to what is said in those letters.

I assume that the Water Power Companies organized in the townships on each side of the Susquehanna River, were organized for the purpose of supplying water and water power for commercial and manufacturing purposes with this additional right:-

"In order that the water and water power may be supplied to the Public to best advantage, in furtherance of its corporate purpose, the development by use of the same, of electric current and power to the public, individuals, firms and corporations at any place or places at such price as may be agreed upon."

I am still of the opinion heretofore expressed, that the Companies organized for the purpose of supplying water and water power were organized under such circumstances as preclude them from exercising their powers outside of the limits of the townships specified in their charters.

Had these Companies been organized under the 18th Clause of the Corporation Act of 1874, as finally amended by the Act of 9th July, 1901 (P. L. 624), it is probable that they would not have been territorially limited. Had they been thus incorporated, they would have

been organized "for the storage, transportation and furnishing of water, with the right to take rivulets and lands and erect reservoirs for holding water, for manufacturing and other purposes, and for the creation, establishing, furnishing, transmission and using of water power therefrom."

As I recall the charters, such were not the powers inserted therein, and the probability is that they will be taken as being in existence under the 9th Section of the Corporation Act of 1874, amended by the Act of 21st May, 1889 (P.L. 259), and as finally amended by the Act of 9th July, 1901 (P.L. 624).

The Act of 2nd July, 1895 (P.L. 425) granting the right to develop electric power for commercial purposes, is applicable to Pennsylvania corporations organized "for the purpose of supplying water power to the public and other corporations owning or controlling water power."

I think this Act is applicable to corporations created under amended section 18 of the Corporation Act; but there can be no doubt that it is applicable to corporations created under amended section 9 of said Act, because under that section there is an express authorization of the incorporation of companies "for the supply . . . of water and water power for commercial and manufacturing purposes."

The Legislature of Pennsylvania has confused the subject of Water Power Companies to such an extent, by almost simultaneously, by Acts of 16th and 21st May, 1895, amending Sections 9 and 18 by allowing incorporations for purposes which interlace, that it may not be amiss to incorporate into this opinion, before giving my conclusions, a recapitulation and summarization of the law upon the subject.

The Corporation Act of 1874 contained two clauses of Section 2nd, relating to Water Companies, viz:

"IX. The Supply of Water to the Public."

"18. The carrying on of any mechanical, mining or manufacturing business, including * * * the storage and transportation of water, with the right to take rivulets and land and erect reservoirs for holding water."

The Act of May 16th, 1889, (P.L. 226, amended Clause 9, so that it read:

"IX. The supply of water to the public, or the supply, storage or transportation of water and water power for commercial and manufacturing purposes."

The Act of May 21st, 1889 (P.L. 259) amended Section 18, so that it read:

"Section 18. The carrying on of any mechanical, mining, quarrying or manufacturing business, including * * * companies for the storage, transportation and furnishing of water, with the right to take rivulets, and lands and erect reservoirs for holding water for manufacturing and other purposes; and for the creation, establishing, furnishing, transmission and using of water power therefrom."

Section 34 of the Act of 1874, defined the powers of Water and Gas Companies, and under the language of this section, the Supreme Court of Pennsylvania, in the case of

Bly v. White Deer, &c. Water Co., 197 Pa. 81, held that a Water Company had no authority to supply water or condemn property outside

"the town, borough, city or district where they may be located."

There does not appear to be in the Act of 1874 any language relating to companies incorporated under the 18th Clause of Section 2nd for the storage and transportation of water, similar to the

language which the Supreme Court has held to be a restriction in the case of Water Supply Companies, and the reference to the companies for the storage and transportation of water in Clause 4 of Section 34, of the Act, seems to differentiate them from companies for the supply of water to the public, in respect to their privileges.

It will be seen from the above that under the Act of 1874, there were two classes of Water Companies authorized, one under Clause 9 of Section 2nd, for the supply of water to the public, and one under Clause 18 for the storage and transportation of water, and that the Supreme Court has held that the first class are restricted to the particular municipality in which the Company is located, but has not made any similar decision with regard to companies for the storage and transportation of water; and further, that there does not appear to be any language in the Act which would lead to the probability of such a decision.

It will be seen also that in 1889, the Legislature added Water Companies to both clauses of Section 2 of the Act of 1874, namely, to Clause 9 and to Clause 18, so that companies for the supply of water power may be incorporated under either clause. Whether a Water Power Company, incorporated under Clause 9 of the Act of 1874 is restricted in locality to the same extent as the Water Supply

Companies incorporated under that Clause, has not been expressly determined, although the language of the Court in Bly vs. White Deer &c. Co., already quoted, seems to intimate this. The opinion of the Attorney General, hereinafter referred to, is to the same effect. There would seem to be no reason for supposing that Companies incorporated for the supply of water power, under Clause 18 of the Act

of 1874, as amended, are restricted as to locality.

The Act of July 2nd, 1895 conferred on corporations organized under the laws of Pennsylvania "for the purpose of supplying water power to the public", and on "other corporations owning or controlling water power", the right to develop electric power for commercial purposes, by means of water power, and to supply current and power to the public, individuals, &c. This Act seems to be broad enough to include corporations, whether formed under Clause 9, or formed under Clause 18.

In an opinion of the Attorney General, delivered February 5th, 1904,

Portland Water & Power Co., 29 C. Ct. Reps. 180, the question of the classification of water and water power companies was reviewed by him, and he reached the conclusion that there were three classes of Water Companies, namely;

1. The supply of water to the public, which companies might be incorporated under Clause 9 of the Act of 1874, as amended;
2. The supply of water and water power for manufacturing and commercial purposes, which companies might be incorporated under Clause 9, as amended;
3. Companies for the storage, transportation and furnishing of water for manufacturing and other purposes, and for the creation, establishing, furnishing, transmission and using of water power therefrom, which companies could be incorporated under Clause 18, as amended.

He comes to the conclusion that although two of these clauses overlap each other, so that ~~that~~ companies for the furnishing of water power may be incorporated under Clause 9 or Clause 18, yet that the classes of corporations are distinct. He also reaches the conclusion that companies either for the supply of water, or for the furnishing of water power, if incorporated under Clause 9, are restricted as to locality, while companies incorporated for water power under Clause 18 are not restricted as to locality.

In my opinion the Attorney General is right in saying that it is permissible, under the laws of Pennsylvania, to organize Water Power Companies under amended section 18 which will not be obliged to be limited in their extent to any township or other territorial sub-division.

After reflection I retain the opinion heretofore expressed as to the propriety of organizing Electric Power Companies in each township, to be merged subsequently into one company. I find no Act of Assembly which will authorize the creation of an Electric Power Company unrestricted as to territory. I think there can be no possible doubt under the case of

Hey v. Springfield Water Co., 207 Pa. 44

that these local Electric Companies can be so merged that the merged corporation will possess the right of supplying electric power within all the districts covered by the special powers of the merging companies.

Under the opinion of the Attorney General it would be well to consider whether or not it would be well to re-cast the scheme so that a company shall be created under amended Section 18 of the Cor-

poration Act, unrestricted as to territory, which will be organized "for the storage, transportation and furnishing of water, with the right to take rivulets and lands and erect reservoirs for holding water, for manufacturing and other purposes, and for the creation, establishing, furnishing, transmission and using of water power therefrom," but for the fact that such company would probably be restricted in its power to mortgage. Such company might also have difficulty in acquiring the properties belonging to the Houseman Water Power Company. I do not at present recall, although I made no special search, any Act authorizing such Water Power Companies to sell their property.

This brings me to the question of a right of Water Power Companies to mortgage their franchises and other property, and the relations which must necessarily be established between the bonded indebtedness authorized and the stock of the corporation.

I still retain the opinion expressed in my former letters, to the effect that it is not advisable to interpret the Act of 1901 as destroying the relations theretofore established between the amount of bonds and capital stock of corporations.

In this connection I will give a summarization of the legislation which is pertinent.

The Act of March 24th, 1877 (P.L. 39) authorized any Gas or Water Company, incorporated under the Act of 1874, to borrow money not exceeding one half of the capital paid in, secured by a mortgage of "all its real and personal property, rights, privileges and franchises."

This Act enlarged the capacity of Gas and Water Companies, not as to the amount of the money to be borrowed, but as to the amount

of property which could be included in the mortgage, and gave such companies the right to include all their real and personal property and franchises.

The Act of May 21st, 1889, page 257, amending the 13th Section of the Act of 1874, authorized all corporations to borrow money, to the extent of one half of the capital stock paid in, secured by a mortgage on the real estate and machinery, or the real estate alone,

"Provided, That it shall be lawful for such corporations as belong to the classes named in clauses four, five, six, seven, nine and eleven of corporations for profit, of the second class, as set forth in section two of the act of which this is a supplement, and also for such corporations as belong to the class named in clause twenty-four, section two, of the Act of Assembly approved April seventeenth, one thousand eight hundred and seventy-six, so to borrow money and so to secure the payment of the same, by a mortgage or mortgages on its property and franchises, to an amount not exceeding double the amount of the capital stock of the corporation actually paid in, and at a rate of interest not exceeding six per centum, and this section shall not be construed to prevent mortgages for a greater amount and at a higher rate of interest, where the power to make the same is expressly given by the terms of this statute to certain classes of corporations accepting this act, or in the statutes under which certain other classes thereof are by the provisions of this statute to be controlled, governed and managed."

This Act of May 21st, 1889 was entitled "Supplement to the Act of April 29th, 1874." It enlarged the powers of certain corporations, so as to give them power to mortgage their franchises and property for a debt not exceeding double the amount of the capital stock paid in. Among these corporations were the corporations named in clause 11 of the Act of 1874, viz: Corporations formed for "the supply of water to the public." The enlarged power was not given to corporations formed for the storage and transportation of water under clause 18 of Section 2 of the Act of 1874.

As has been already stated, clause 11 was amended May 16th, 1889, five days before the Act extending the power of the mortgage so as to include corporations for "the supply, storage or transportation of water and water power for commercial and manufacturing purposes; and on May 21st, 1889, the same date as the Act enlarging the power to mortgage, clause 18 was amended so as to include companies "for the storage, transportation and furnishing of water, with the right to take rivulets and land and erect reservoirs for holding water for manufacturing and other purposes, and for the creation, establishing, furnishing, transmission and using of water power therefrom."

With regard to Water Power Companies incorporated under clause 18 of the Act of 1874, as amended May 21st, 1889, the question as to their right to borrow money on mortgage, depends upon whether they are within the terms of the Act of March 24th, 1877. They are clearly not within the terms of the enlarging Act of May 21st, 1889, as they are not formed under the clause therein specifically referred to.

• The Act of March 24th, 1877 is entitled an Act "to authorize Gas and Water Companies to borrow money and secure the same by bond and mortgage", and it confers the powers of borrowing on "any Gas Company or Water Company incorporated under the provisions of the Act of the General Assembly of this Commonwealth, entitled "An Act to provide for the incorporation and regulation of certain corporations, approved 29th day of April, A. D. 1874." The sole question under this Act is whether the powers conferred by it are confined to companies for the supply of water to the public incorporated under the 9th clause of Section 2 of the Act of 1874,